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PATENT 2/23/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

George Dean Hone

Serial No.: 09/711,129

Filed: November 10, 2000

For: PASSENGER LOADING BRIDGE

Examiner: A.K. Pechhold

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AMENDMENT

Commissioner for Patents
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Sir:

This Amendment is being filed in response to the Office Action mailed on July 1, 2002, whose three-month shortened statutory period for response is set to expire on October 1, 2002.

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RELATED APPEALS AND INTERFERENCES

None of the appellants, the appellants' representative, or the assignee is aware of any pending appeal or interference which would directly affect, be directly affected by, or have any bearing on the Board's decision in the present pending appeal.

STATUS OF THE CLAIMS

Claims 1 through 17 are currently pending in the application and stand rejected.

No claims are allowed.

The rejection of claims 1 through 17 is being appealed.

STATUS OF THE AMENDMENTS

The appellants filed an amendment making changes to claims 1, 6, and 7, and adding new claims 11 through 17 in an Amendment filed January 2, 2003. The amendments and new claims were entered as indicated in the Final Office Action dated February 25, 2003. (*See, Final Office Action* of February 25, 2003, pages 2-7).

No other amendments to the claims have been filed, but other communications arguing patentability have been submitted.

SUMMARY OF THE INVENTION

The invention contemplates a passageway formed of a floor element and two wall elements positioned on the floor element spacedly apart from one another and extending upright from the floor element. (*See, Specification* as-filed, page 6, lines 5-14; FIG. 1; page 7, lines 10-13, and FIG. 3). The invention further contemplates a ceiling element positioned atop the two walls to form a covered passageway. (*See, Id.* at page 3, lines 22-23). The floor element, the two wall elements and the ceiling element are formed of one or more panels of composite materials produced by a pultrusion process. (*See, Id.* at page 7, lines 17-19). The passageway is used to facilitate passenger travel from the terminal to a moveable portion of the bridge which intercooperates with a distal end of the passageway. (*See, Id.* at page 3, lines 25-27 and page 6, lines 6-8). The instant passageway, when used in conjunction with the movable portion of the

bridge, facilitates passenger travel from an airport terminal structure to an aircraft parked proximate to the terminal structure. (*See, Id.* at page 6, lines 6-14).

A pultruded panel employed in the instant construction may be formed in a honeycomb type structure thereby providing one or more elongate compartments or channels which extend along the length of the panel. (*See, Id.* at page 8, lines 1-2 and page 9, lines 26-28). In constructing a wall, floor or channel element from these panels, the panels may be positioned to define a compartment or channel which extends uninterrupted along the length of the wall, floor or ceiling. (*See, Id.* at page 9, line 26 through page 10, line 3). These compartments or channels may be dimensioned to receive and retain electrical wiring for servicing the various power driven apparatus within the bridge. (*See, Id.* at page 9, lines 4-7). The compartments or channels may further be utilized to receive ducting or piping for transmitting conditioned air or water along the length of the bridge for servicing the bridge of the aircraft. (*See, Id.* at page 10, lines 3-5). The compartments or channels may be filled or partially filled with insulation thereby controlling the heat loss to or from the interior of the bridge structure. (*See, Id.* at page 10, lines 5-6).

The use of panels provides a construction which gives a high structural strength while also minimizing weight. (*See, Id.* at page 4, lines 12-14 and page 7, lines 19-29). The panels form modular elements which may be positioned in different orientations to produce passageway constructions which are difficult to achieve with conventional metal construction techniques. (*See, Id.*). Since the composite material is highly resistant to corrosion and rust, a passageway constructed from composite panels avoids many of the problems associated with conventional metal, e.g., steel, bridge constructions. (*See, Id.* at page 4, lines 16-19). The use of a honeycomb construction also allows for the construction of a structure with a high insulation value in contrast to the high heat loss associated with conventional metal bridge constructions. (*See, Id.* at page 4, lines 20-21).

ISSUES

I. Whether claim 1 is unpatentable under 35 U.S.C. § 103(a) over Veenema (U.S. Pat. 3,989,157) in view of Auer (U.S. Pat. 4,557,091).

II. Whether claims 2 through 5 are unpatentable under 35 U.S.C. § 103(a) over Veenema and Auer as applied to claim 1, and further in view of De Zen (U.S. Pat. 6,189,269).

III. Whether claims 6 through 17 are unpatentable under 35 U.S.C. § 103(a) over Veenema and Auer, and further in view of De Zen.

GROUPING OF THE CLAIMS

For purposes of this appeal, the grouping of the claims is as follows:

- (a) Claim 1 recites a boarding bridge comprising a passageway which defines a pathway for travel between an aircraft terminal and a docked aircraft, having an improvement comprising a floor element; two wall elements positioned atop the floor element, the wall elements being positioned spacedly apart from one another and extending uprightly from the floor element; a ceiling element positioned atop the wall elements; and wherein the floor element, the wall elements and the ceiling element are fabricated from at least one pultruded panel.

For purposes of this appeal, claim 1 stands alone.

- (b) Claim 2 recites the passageway of claim 1, wherein the at least one pultruded panel defines a honeycomb cross section and at least one elongate channel therein dimensioned to receive and retain wiring for servicing the passageway.

For purposes of this appeal, claim 2 stands alone.

- (c) Claim 3 recites the passageway of claim 1, wherein the floor element, the wall elements, and the ceiling element are each fabricated from a plurality of pultruded panels, each of the pultruded panels defining a honeycomb cross-section and having a longitudinal axis, the longitudinal axes of the pultruded panels being oriented parallel to a longitudinal axis of the passageway.

For purposes of this appeal, claim 3 stands alone.

- (d) Claim 4 recites the passageway of claim 1, wherein the wall elements are each fabricated from a plurality of pultruded panels, each of the pultruded panels defining a honeycomb cross-section and having a longitudinal axis, the

longitudinal axes of the pultruded panels of the wall elements being oriented orthogonal to a longitudinal axis of the passageway.

For purposes of this appeal, claim 4 stands alone.

- (e) Claim 5 recites the passageway of claim 4, wherein the ceiling element is fabricated from a plurality of pultruded panels, each of the pultruded panels having a longitudinal axis, the longitudinal axes of the pultruded panels of the ceiling element being oriented orthogonal to the longitudinal axis of the passageway.

For purposes of this appeal claim 5 stands alone.

- (f) Claim 6 recites a passageway for placement between an aircraft terminal and an aircraft for interconnecting the aircraft terminal with the aircraft, having an improvement comprising a plurality of passageway modules, each module comprising a floor element; two wall elements positioned atop the floor element, the wall elements being positioned spacedly apart from one another and extending uprightly from the floor element; a ceiling element positioned atop the two wall elements; wherein the floor element, the wall elements and the ceiling element are fabricated from at least one pultruded panel defining a honeycomb cross section. The improvement further comprises a connection structure for interconnecting the modules, one to another at their respective ends to form a continuous passageway.

For purposes of this appeal, claim 6 stands alone.

- (g) Claim 7 recites the passageway of claim 6, the improvement further comprising a connection structure for interconnecting the modules, one to another at their respective ends to form a continuous passageway. In claim 7, the passageway comprises a pair of frame structures, the frame structures having an upwardly extending ear and a downwardly extending ear; a first pair of angle defining elongate connection elements for inter-cooperating with the upwardly extending ear and two ceiling elements of the modules; a second pair of angle defining elongate connection elements for inter-cooperating with the downwardly extending ear and two floor elements of the modules; and an engaging structure

for interconnecting the first pair of angle defining elongate connection elements with the pair of frame structures and for interconnecting the second pair of angle defining elongate connection elements with the pair of frame structures.

For purposes of this appeal, claim 7 stands alone.

- (h) Claim 8 recites the passageway of claim 7, wherein the frames are quadrilateral in configuration and wherein each frame defines a passageway opening therethrough.

For purposes of this appeal, claim 8 stands alone.

- (i) Claim 9 recites the passageway of claim 7, wherein the engaging structure comprises a nut and bolt combination.

For purposes of this appeal, claim 9 stands alone.

- (j) Claim 10 recites the passageway of claim 7, wherein each frame includes an engagement surface configured to abut against a surface of the module sufficient to permit an adhesive bond between the engagement surface and the module surface.

For purposes of this appeal, claim 10 stands alone.

- (k) Claim 11 recites a passageway for placement between an aircraft terminal and an aircraft for interconnecting the aircraft terminal with the aircraft, the passageway comprising a plurality of passageway modules having an improvement in each of the passageway modules consisting essentially of: a floor element; two wall elements positioned atop the floor element, the wall elements being positioned spacedly apart from one another and extending uprightly from the floor element; a ceiling element positioned atop the two wall elements; wherein the floor element, the wall elements and the ceiling element are fabricated from at least one pultruded panel defining a honeycomb cross section; and connection structure for interconnecting the modules, one to another at their respective ends to form a continuous passageway, wherein the connection structure further comprises a pair of frame structures having an upwardly extending ear and a downwardly extending ear; a first pair of angle defining elongate connection elements for inter-cooperating with the upwardly extending ear and two ceiling elements of the

modules; a second pair of angle defining elongate connection elements for inter-cooperating with the downwardly extending ear and two floor elements of the modules; and engaging structure for interconnecting the first pair of angle defining elongate connection elements with the pair of frame structures and for interconnecting the second pair of angle defining elongate connection elements with the pair of frame structures.

For purposes of this appeal, claim 11 stands alone.

- (l) Claim 12 recites the passageway of claim 11, wherein the frames are quadrilateral in configuration and wherein each frame defines a passageway opening therethrough.

For purposes of this appeal, claim 12 stands alone.

- (m) Claim 13 recites the passageway of claim 11, wherein each frame includes an engagement surface configured to abut against a surface of the module sufficient to permit an adhesive bond between the engagement surface and the module surface.

For purposes of this appeal, claim 13 stands alone.

- (n) Claim 14 recites the passageway of claim 12, wherein the at least one pultruded panel defines a honeycomb cross section and at least one elongate channel therein dimensioned to receive and retain wiring for servicing the passageway.

For purposes of this appeal, claim 14 stands alone.

- (o) Claim 15 recites the passageway of claim 14, wherein the floor element, the wall elements and the ceiling element are each fabricated from a plurality of pultruded panels, each of the pultruded panels defining a honeycomb cross-section and having a longitudinal axis, the longitudinal axes of the pultruded panels being oriented parallel to a longitudinal axis of the passageway.

For purposes of this appeal, claim 15 stands alone.

- (p) Claim 16 recites the passageway of claim 14, wherein the wall elements are each fabricated from a plurality of pultruded panels, each of the pultruded

panels defining a honeycomb cross-section and having a longitudinal axis, the longitudinal axes of the pultruded panels of the wall elements being oriented orthogonal to a longitudinal axis of the passageway.

For purposes of this appeal, claim 16 stands alone.

(q) Claim 17 recites the passageway of claim 14, wherein the ceiling element is fabricated from a plurality of pultruded panels, each of the pultruded panels having a longitudinal axis, the longitudinal axes of the pultruded panels of the ceiling element being oriented orthogonal to the longitudinal axis of the passageway.

For purposes of this appeal, claim 17 stands alone.

ARGUMENT

Claim Interpretation

Independent claim 1 is a Jepson-type claim in accordance with 37 C.F.R. 1.75(e). Independent claims 6 and 11 are claims in standard format. Appellant respectfully submits that the Examiner is misconstruing the scope of claims 1, 6 and 11. The Final Office Action states “the preamble elements in a Jepson-type claim (i.e., a claim of the type discussed in 37 CFR 1.75(e)) are impliedly admitted to be old in the art. Applicant even admits on page 2, lines 11-13 that ‘[t]he use of boarding bridges for facilitating the movement of passengers and cargo from a terminal building to an aircraft parked proximate thereto is well known.’ ... Therefore, the Jepson-type format used in claims 1, 6, and 11 is considered part of the admitted prior art.” (Final Office Action mailed February 25, 2003, page 8).

Appellant respectfully disagrees with the Examiner’s reasoning on the issue of Jepson format. First, appellant respectfully submit that the elements in the preamble of a Jepson-type claim are also elements of the claimed invention, even if such elements form part of the prior art. As stated by the Federal Circuit, in construing the construction of a Jepson-type claim: “the claim preamble defines not only the context of the claimed invention, but also its scope.” (*Rowe v. Dror*, 112 F.3d 473, 479, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997)). Thus, “the claimed invention consists of the preamble in combination with the improvement.” (*Pentec, Inc. v.*

Graphic Controls Corp., 776 F.2d 309, 315, 227 USPQ 766, 772 (Fed. Cir. 1985)). Accordingly, since “the preamble is a limitation in a Jepson-type claim,” the elements in the preamble of claim 1 also constitute structural elements of the claimed invention. (*Epcon Gas Systems, Inc. v. Bauer Compressors, Inc.*, 279 F.3d 1022, 1029, 61 USPQ2d 1470, 1477 (Fed. Cir. 2002)). Relying on the logic of the CAFC, any structural elements found in the preamble of a Jepson claim must be considered as elements in the claim, together with those elements which are listed after the preamble. It follows that any rejection under 35 USC 102 or 103 must include a showing of combination of all of the elements both in identified in the preamble as well as identified after the preamble.

Therefore, applicant submits that the portion of claim 1 reciting “a boarding bridge, a passageway which defines a pathway for travel between an aircraft terminal and a docked aircraft” must be considered to define a claim limitation or an element of claim 1. Further, applicant maintains that the boarding bridge and passageway must be considered as claim limitations when the Examiner frames a rejection under 35 USC 102 or 103 in rendering a patentability determination. In order to reject claim 1, Applicant maintains that the Examiner must provide a teaching of a boarding bridge, defining a passageway, in association with the remaining claim elements set forth in claim 1. In the present context, i.e. a rejection under 35 USC 103(a), the Examiner must provide a teaching or motivation to modify the construction of an aircraft boarding bridge to include all of the limitations set forth in claim 1. Applicant respectfully submits that the Examiner has not met this burden. Instead of establishing that the art would teach or suggest the modification of an aircraft boarding bridge to include the claimed limitations, the Examiner has disassociated the boarding bridge and its passageway from the cited references. In essence the Examiner has argued that a container could be modified to provide some of the claimed structural elements of the claim. Applicant submits that this approach to formulating a rejection under 35 USC 103(a) is not supported by either the MPEP or the case law interpreting 35 USC 103.

With reference to claims 6 and 11, applicant submits that the aforesaid claims are not Jepson claims and therefore the reasoning of the Examiner regarding Jepson claims and the

implications of such claims is inapplicable. Claims 6 and 11 are claims which are structured in traditional claim format. It follows that in the context of claims 6 and 11, under 35 USC 103(a), the Examiner is obligated to (1) identify a suggestion or motivation to modify the reference or to combine reference teachings; (2) have a reasonable expectation of success in that modification or combination; and (3) demonstrate that the combination of the references must teach or suggest all of the claim limitations. Appellant respectfully submits that this has not occurred in the present case. The portion of claim 6 reciting a "passageway for placement between an aircraft terminal and an aircraft for interconnecting said aircraft terminal with said aircraft" is an element of claim 6 and must be considered in rendering a patentability determination. The element of a passageway has not been identified by the Examiner, nor has any suggestion or motivation to modify or combine such a passageway with the structure of the cited references been demonstrated. Further, the portion of claim 11 stating a "passageway for placement between an aircraft terminal and an aircraft for interconnecting said aircraft terminal with said aircraft, said passageway comprised of a plurality of passageway modules" is an element of claim 11 and must be considered in rendering a patentability determination. Here again, the Examiner has not identified a suggestion or motivation in the art to modify such a passageway to obtain the claimed structure.

Rejections under 35 U.S.C. § 103

The obviousness rejections set forth in the Final Office Action were directed at the specific elements which constituted the "improvements" of the claimed passageway, i.e. the rejections were focused on the claim limitations which appear after the preamble. The rejections were not directed to a "passageway", as identified in the preamble, in combination with the elements which appeared after the preamble. "When applying 35 U.S.C. § 103, the following tenets of patent law must be adhered to: (A) The claimed invention must be considered as a whole." (M.P.E.P. § 2141.01). Therefore, the elements recited in the preamble of the pending Jepson-type claim must be addressed in addition to the elements of the improvement in rendering a patentability determination. To establish a *prima facie* case of obviousness, the elements of the preamble must be combined or modified with the various elements of the improvements.

Claim 1

Claim 1 stands rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Veenema in view of Auer.

A *prima facie* case of obviousness cannot be established for claim 1 since the cited references do not teach or suggest each and every element of claim 1. The elements in the preamble of claim 1 are elements of the claimed invention and, therefore, to establish obviousness the cited references must teach or suggest all of the elements of the claimed invention including “a boarding bridge, a passageway which defines a pathway for travel between an aircraft terminal and a docked aircraft.” Neither Veenema nor Auer teach or suggest a passageway which defines a pathway for travel between an aircraft terminal and a docked aircraft as required to establish a *prima facie* case of obviousness.

Further, the cited references do not include a suggestion or motivation to modify or combine the reference teachings to arrive at the claimed invention. The Final Office Action indicates “when the front and rear panels function as a door by sliding between the flanges of the vertical rails, the entire container of Veenema qualifies as a ‘passageway’, since it is ‘a way that allows passage.’” (Final Office Action, at page 9). However, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” (M.P.E.P. § 2143.01, *citing In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (emphasis in original)). Therefore, since the cited references do not suggest or motivate modifying the container to be configured as a passageway or modifying the container to be configured as a boarding bridge, a *prima facie* case of obviousness cannot be established. Applicant respectfully traverses the rejection and submits that Veenema and Auer, individually or in any combination thereof, do not support a *prima facie* case of obviousness of the present invention recited in the presently amended claim 1 because (i) there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art of the instant invention to modify the reference or to combine the reference teachings; and (ii) the prior art references do not teach or suggest all the limitations recited therein (*Vaeck*, *supra*).

Applicant respectfully submits that the lack of suggestion and motivation to combine

Veenema and Auer is based on the fact that the proposed modification of the combination of Veenema and Auer to find obviousness in the present invention at most renders the prior art of Veenema unsatisfactory for its intended purpose or, at least, changes its principle of operation. It is well known that “if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Further, “if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

The Veenema reference is directed to a container assembly. Veenema does not appear to contain any teaching or suggestion that the container assembly defines a passageway between an aircraft terminal building and a docked aircraft. The dictionary defines a passageway as “a way that allows passage” (Webster Dictionary, 2002). In fact such a passage or pathway appears precluded in the Veenema construction by the end panels (15). See Fig. 4 and Col. 3, lines 43-64. Special attention is directed to Col. 3, lines 57-59 wherein Veenema indicates that the container assembly is constructed to be completely sealed. Applicant submits that a container that is completely sealed precludes the claimed function of a passageway, i.e., a way that allows passage. Applicant respectfully maintains that the Veenema is directed to a container structure that is constructed to receive and retain an article. The Veenema container is not intended to function as a passageway nor does it define a pathway for travel between an aircraft terminal building and a docked aircraft. Therefore, contrary to the Office’s conclusion based on *Ex parte Masham* (Office Action, page 2, item 2), Veenema’s apparatus and the present invention have significantly different structural limitations.

Auer relates generally to structural systems, and specifically relates to extruded structural systems which include extruded structural panels and extruded panel joining members for assembling a structural system with a plurality of panels (Auer, col. 1, lines 9-13). Auer teaches explicitly that “structural assemblies made with the preferred embodiment of the present invention may be successfully employed in such diverse applications as electrical utility cooling

tower louvers, floating covers for oil and other petroleum product storage tanks, anti-corrosive structures for use in harsh chemical plant environments, computer room flooring, self-supporting conduit for electrical and utility cabling, energy efficient insulated building siding for storage shelters and refrigerated enclosures, air intake housings and ducting, architectural room dividers, and heavy equipment hoods and enclosures” (Id., col. 1, line 65 – col. 2, line 8). Applicant respectfully submits that Auer does not teach or suggest the use of his invention in a passageway within a boarding bridge for facilitating passage between an aircraft terminal and a docked aircraft. Furthermore, there is no suggestion in Auer to modify Veenema’s container to create a passageway. Therefore, citation of Veenema as a passageway changes the principle of operation of Veenema’s container invention, thus rendering it unsatisfactory for its intended purpose. The combination of Auer and Veenema does not remedy the inappropriateness of the use of the Veenema reference as prior art for the above-referenced invention. Therefore, the combination of Veenema and Auer cannot support a finding of obviousness of the instant invention for a lack of motivation or suggestion to combine the references.

Further, Applicant respectfully submits that Veenema and Auer, individually or in any combination thereof, cannot support a finding of obviousness of the instant invention because they do not teach all of the limitations recited in the presently amended claim 1. As previously stated, presently amended claims 1 is a Jepson-type claim as required in 37 C.F.R. 1.75(e). Consequently, its preamble, directed to a passageway within a boarding bridge for facilitating passage between an aircraft terminal and a docked aircraft, constitutes a proper claim limitation that can be relied upon to distinguish the claim over the cited art. Veenema and Auer, individually or in any combination thereof, do not teach the limitation of a passageway within a boarding bridge for facilitating passage between an aircraft terminal and a docked aircraft; therefore, they do not support a finding of obviousness of presently amended claim 1. Finally, assuming *arguendo* that the combination of Veenema and Auer may teach elements of the above-referenced invention, a rejection based on a *prima facie* case of obvious is improper unless the motivation to combine the cited prior art references is objectively articulated. “A statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of the art at the time the claimed invention was made because the references relied

upon teach that [some] aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000). See also *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a *prima facie* case of obvious was held improper.). Further, Appellant submits that “in order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). A finding to the contrary, neglecting the requirements of *Ellis*, *Oetiker*, and *Deminski*, *supra*, can only be justified by use of the benefit of impermissible hindsight vision afforded by the Applicant’s claimed invention—a procedure contrary to current principles of patent law (cf. *Hodosh*, *supra*).

Claims 2 through 5

Claims 2 through 5 stand rejected as assertedly being unpatentable over Veenema and Auer as applied to claim 1, and further in view of De Zen.

Claims 2-5 are non-obvious, at the very least, as depending from non-obvious independent claim 1. (See, *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Each of claims 2 through 5 is dependent from independent claim 1. The Examiner relies on the combination of Veenema and Auer as teaching all of the claim limitations of independent claim 1, and then cites De Zen as teaching the additional subject matter of claims 2 through 5.

As set forth above with respect to claim 1, Veenema and Auer fail to provide the suggestion or motivation for their combination and to teach or suggest all the claim limitations of claim 1, which limitations are incorporated by way of dependency in claims 2 through 5.

Specifically, the citation of Veenema to teach or suggest the invention recited in presently amended claim 1 renders it inoperable as a sealed container as already explained. Further, the addition of Auer does not remedy that problem. Further, Veenema and Auer do not teach or suggest all of the claim limitations recited in claim 1. Applicant respectfully submits that De Zen, relating to wall members securing wiring in channels interiorly of a hollow structure formed by the wall forming member and other wall forming members adapted to accept concrete or other material therein to enable a structure erected there from to be anchored to a base and converted into a permanent and essentially indestructible structure, does not remedy the lack of motivation or suggestion to combine Veenema and Auer, nor does it, in combination with Veenema and Auer, teach all of the limitations of the invention recited in claim 1 as required by law in order to support a finding of obviousness of presently amended claim 1. Therefore a finding of obviousness of claim 1 based on Veenema, Auer, and De Zen is not proper. Thus independent claim 1 is not made obvious by the additional prior art reference of De Zen and because "independent claim [1 is] nonobvious under 35 U.S.C. 103, claim[s 2 through 5] depending there from[, are also] nonobvious." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Separate Patentability of Claim 2

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 2 further defines the invention of claim 1. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest "at least one pultruded panel defines a honeycomb cross section and at least one elongate channel therein dimensioned to receive and retain wiring for servicing said passageway," and, thus, cannot render dependent claim 2 obvious.

Separate Patentability of Claim 3

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 3 further defines the invention of claim 1. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest "wherein said floor element, said wall elements and said ceiling element are each fabricated from a plurality of pultruded panels, each of said pultruded panels defining a

honeycomb cross-section and having a longitudinal axis, said longitudinal axes of said pultruded panels being oriented parallel to a longitudinal axis of said passageway,” and, thus, cannot render dependent claim 3 obvious.

Separate Patentability of Claim 4

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 4 further defines the invention of claim 1. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein said wall elements are each fabricated from a plurality of pultruded panels, each of said pultruded panels defining a honeycomb cross-section and having a longitudinal axis, said longitudinal axes of said pultruded panels of said wall elements being oriented orthogonal to a longitudinal axis of said passageway,” and, thus, cannot render dependent claim 4 obvious.

Separate Patentability of Claim 5

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 5 further defines the invention of claim 4. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein said ceiling element is fabricated from a plurality of pultruded panels, each of said pultruded panels having a longitudinal axis, said longitudinal axes of said pultruded panels of said ceiling element being oriented orthogonal to said longitudinal axis of said passageway,” and, thus, cannot render dependent claim 5 obvious.

Claims 6 through 17

Claims 6 through 17 stand rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Veenema and Auer, and further in view of De Zen.

A *prima facie* case of obviousness cannot be established with regard to independent claim 6 or 11 since the cited references do not teach or suggest each and every element of independent claim 6 or independent claim 11. Claim 6 is directed to “a passageway for placement between an aircraft terminal and an aircraft for interconnecting said aircraft terminal with said aircraft, wherein the improvement in said passageway comprises: a plurality of passageway modules.” Claim 11 recites in part a “passageway for placement between an aircraft terminal and an aircraft

for interconnecting said aircraft terminal with said aircraft, said passageway comprised of a plurality of passageway modules.” The cited references do not teach or suggest a passageway for placement between an aircraft terminal and an aircraft as required by independent claims 6 or 11 in order to establish a *prima facie* case of obviousness.

The Final Office Action indicates “[w]ith respect to the recitations in lines 4-6, 7-9, and 10-13, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitation.” (Final Office Action at page 6, *citing Ex parte Masham*, 2 USPQ2d 1647 (1987)). However, the claim at issue in *Ex parte Masham* was not a Jepson-style claim, rather the preamble of the claim in *Ex part Masham* recited “[a]n apparatus for mixing flowing developer material.” (*Ex parte Masham* at 1647). Further, claims 6 and 11 are not intended to be used as a passageway, rather claims 6 and 11 actually **claim** a passageway. Thus, the elements of the preamble must be considered. Also, neither the container of Veenema nor the extruded structural system of Auer, alone or in combination, satisfies the claimed structural limitations of claim 6 or 11.

A *prima facie* case of obviousness also cannot be established since the cited references do not suggest or motivate a modification or combination of the teachings of the cited references. “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” (M.P.E.P. § 2143.01, *citing In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (emphasis in original)). In fact, neither Veenema nor Auer, alone or in combination, even mentions the terms “passage” or “aircraft.” Therefore, since the cited references do not suggest or motivate a passageway between an aircraft terminal and an aircraft including the structural limitations of claim 6 or 11, a *prima facie* case of obviousness cannot be established.

Claims 7 through 10 are non-obvious, at the very least, as depending from non-obvious independent claim 6 and claims 12 through 17 are non-obvious, at the very least, as depending from non-obvious independent claim 11.

Applicant respectfully submits that Veenema, Auer, and De Zen, individually or in any combination thereof, do not support a *prima facie* case of obviousness of the present invention

recited in the presently amended claim 6 because (i) there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art of the instant invention to modify the reference or to combine the reference teachings; and (ii) the prior art references do not teach or suggest all the limitations recited therein (*Vaeck*, *supra*).

Applicant respectfully submits that, similarly to the arguments presented hereinabove related to claim 1, the lack of suggestion and motivation to combine Veenema, Auer, and De Zen is based on the fact that the proposed modification of the combination of the three prior art references to find obviousness in the present invention changes the principle of operation in Veenema, rendering it unsatisfactory for its intended purpose (*Gordon and Ratti*, *supra*). Further, contrary to the Office's conclusion based on *Masham* (Office Action, page 5, item 4), Veenema's apparatus and the present invention recited in the presently amended claim 6 have significantly different structural limitations.

Applicant respectfully submits that neither Auer nor De Zen teach or suggest the use of their invention, individually or in any combination thereof, in a passageway within a boarding bridge for facilitating passage between an aircraft terminal and a docked aircraft. Furthermore, there is no suggestion in Auer and/or De Zen to modify Veenema's container to create a passageway. Therefore, citation of Veenema as a passageway changes the principle of operation of Veenema's container invention, thus rendering it unsatisfactory for its intended purpose. The combination of Auer, De Zen, and Veenema does not remedy the inappropriateness of the use of the Veenema reference as prior art for the instant invention recited in claim 6. Therefore, the combination of Veenema, Auer, and De Zen cannot support a finding of obviousness of the instant invention for a lack of motivation or suggestion to combine the references.

Further, Applicant respectfully submits that Veenema, Auer, and De Zen, individually or in any combination thereof, cannot support a finding of obviousness of the instant invention of presently amended claim 6 because they do not teach all of the limitations recited therein. Claim 6 is directed to a passageway within a boarding bridge for facilitating passage between an aircraft terminal and a docked aircraft. The claim requires a boarding bridge and such a bridge constitutes a proper claim limitation that can be relied upon to distinguish the claim over the

cited art. Veenema, Auer, and De Zen, individually or in any combination thereof, do not teach the limitation of a passageway within a boarding bridge for facilitating passage between an aircraft terminal and a docked aircraft; therefore, they do not support a finding of obviousness of presently amended claim 6 (cf. *Levengood, Kotzab, Rouffet, Oetiker, Deminski, and Clay*, supra) unless impermissible hindsight afforded by the Applicant's claimed invention is improperly used (cf. *Hodosh*, supra).

Finally, each of claims 7 through 10 is dependent from independent claim 6. As just explained with respect to claim 6, Veenema, Auer, and De Zen fail to provide the suggestion or motivation for their combination and to teach or suggest all the claim limitations of claim 6 in support of a finding of obviousness. The limitations of presently amended claim 6 are incorporated by way of dependency in claims 7 through 10. Thus, because "independent claim [6 is] nonobvious under 35 U.S.C. 103, claim[s 7-10] depending there from[, are also] nonobvious" *Fine*, supra.

Separate Patentability of Claim 7

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 7 further defines the invention of claim 6. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest "wherein said connection structure comprises: a pair of frame structures, said frame structures having an upwardly extending ear and a downwardly extending ear; a first pair of angle defining elongate connection elements for inter-cooperating with said upwardly extending ear and two ceiling elements of said modules; a second pair of angle defining elongate connection elements for inter-cooperating with said downwardly extending ear and two floor elements of said modules; and engaging structure for interconnecting said first pair of angle defining elongate connection elements with said pair of frame structures and for interconnecting said second pair of angle defining elongate connection elements with said pair of frame structures," and, thus, cannot render dependent claim 7 obvious.

Separate Patentability of Claim 8

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 8 further

defines the invention of claim 7. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein said frames are quadrilateral in configuration and wherein each said frame defines a passageway opening therethrough,” and, thus, cannot render dependent claim 8 obvious.

Separate Patentability of Claim 9

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 9 further defines the invention of claim 7. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein said engaging structure comprises a nut and bolt combination,” and, thus, cannot render dependent claim 9 obvious.

Separate Patentability of Claim 10

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 10 further defines the invention of claim 7. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein each said frame includes an engagement surface configured to abut against a surface of said module sufficient to permit an adhesive bond between said engagement surface and said module surface,” and, thus, cannot render dependent claim 10 obvious.

Separate Patentability of Claim 12

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 12 further defines the invention of claim 11. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein said frames are quadrilateral in configuration and wherein each said frame defines a passageway opening therethrough,” and, thus, cannot render dependent claim 12 obvious.

Separate Patentability of Claim 13

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 13 further

defines the invention of claim 11. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein each said frame includes an engagement surface configured to abut against a surface of said module sufficient to permit an adhesive bond between said engagement surface and said module surface,” and, thus, cannot render dependent claim 13 obvious.

Separate Patentability of Claim 14

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 14 further defines the invention of claim 12. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein said at least one pultruded panel defines a honeycomb cross section and at least one elongate channel therein dimensioned to receive and retain wiring for servicing said passageway,” and, thus, cannot render dependent claim 14 obvious.

Separate Patentability of Claim 15

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 15 further defines the invention of claim 14. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein said floor element, said wall elements and said ceiling element are each fabricated from a plurality of pultruded panels, each of said pultruded panels defining a honeycomb cross-section and having a longitudinal axis, said longitudinal axes of said pultruded panels being oriented parallel to a longitudinal axis of said passageway,” and, thus, cannot render dependent claim 15 obvious.

Separate Patentability of Claim 16

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 16 further defines the invention of claim 14. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein said wall elements are each fabricated from a plurality of pultruded panels, each of said pultruded panels defining a honeycomb cross-section and having a longitudinal axis, said longitudinal axes of said pultruded panels of said wall elements being oriented orthogonal to a longitudinal axis of said passageway,” and, thus, cannot render

dependent claim 16 obvious.

Separate Patentability of Claim 17

Pursuant to 37 C.F.R. § 1.192(c)(7), appellants point out that dependent claim 17 further defines the invention of claim 14. De Zen does not, alone or in combination with Veneema or Auer, teach or suggest “wherein said ceiling element is fabricated from a plurality of pultruded panels, each of said pultruded panels having a longitudinal axis, said longitudinal axes of said pultruded panels of said ceiling element being oriented orthogonal to said longitudinal axis of said passageway,” and, thus, cannot render dependent claim 17 obvious.

CONCLUSION

Since none of the cited references teach or suggest each and every element of any of claims 1 through 17, a *prima facie* case of obviousness cannot be established. Reconsideration and reversal of the rejections of claims 1 through 17 under 35 U.S.C. § 103(a) are requested for the foregoing reasons.

APPENDIX

Appealed claims 1 through 17 are attached hereto as Appendix A.

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APPENDIX A

1. (Previously presented) In a boarding bridge, a passageway which defines a pathway for travel between an aircraft terminal and a docked aircraft, wherein the improvement in said passageway comprises:

a floor element;

two wall elements positioned atop said floor element, said wall elements being positioned spacedly apart from one another and extending uprightly from said floor element;

a ceiling element positioned atop said two wall elements;

wherein said floor element, said wall elements and said ceiling element are fabricated from at least one pultruded panel.

2. (Original) The passageway of claim 1 wherein said at least one pultruded panel defines a honeycomb cross section and at least one elongate channel therein dimensioned to receive and retain wiring for servicing said passageway.

3. (Original) The passageway of claim 1 wherein said floor element, said wall elements and said ceiling element are each fabricated from a plurality of pultruded panels, each of said pultruded panels defining a honeycomb cross-section and having a longitudinal axis, said longitudinal axes of said pultruded panels being oriented parallel to a longitudinal axis of said passageway.

4. (Original) The passageway of claim 1 wherein said wall elements are each fabricated from a plurality of pultruded panels, each of said pultruded panels defining a honeycomb cross-section and having a longitudinal axis, said longitudinal axes of said pultruded panels of said wall elements being oriented orthogonal to a longitudinal axis of said passageway.

5. (Original) The passageway of claim 4 wherein said ceiling element is fabricated from a plurality of pultruded panels, each of said pultruded panels having a longitudinal axis, said longitudinal axes of said pultruded panels of said ceiling element being oriented orthogonal to said longitudinal axis of said passageway.

6. (Previously presented) A passageway for placement between an aircraft terminal and an aircraft for interconnecting said aircraft terminal with said aircraft, wherein the improvement in said passageway comprises:

a plurality of passageway modules, each module comprising:

a floor element;

two wall elements positioned atop said floor element, said wall elements being positioned spacedly apart from one another and extending uprightly from said floor element;

a ceiling element positioned atop said two wall elements;

wherein said floor element, said wall elements and said ceiling element are fabricated from at least one pultruded panel defining a honeycomb cross section; and connection structure for interconnecting said modules, one to another at their respective ends to form a continuous passageway.

7. (Previously presented) The passageway of claim 6 wherein said connection structure comprises:

a pair of frame structures, said frame structures having an upwardly extending ear and a downwardly extending ear;

a first pair of angle defining elongate connection elements for inter-cooperating with said upwardly extending ear and two ceiling elements of said modules;

a second pair of angle defining elongate connection elements for inter-cooperating with said downwardly extending ear and two floor elements of said modules; and

engaging structure for interconnecting said first pair of angle defining elongate connection elements with said pair of frame structures and for interconnecting said second pair of angle defining elongate connection elements with said pair of frame structures.

8. (Previously presented) The passageway of claim 7 wherein said frames are quadrilateral in configuration and wherein each said frame defines a passageway opening therethrough.

9. (Previously presented) The passageway of claim 7 wherein said engaging structure comprises a nut and bolt combination.

10. (Previously presented) The passageway of claim 7 wherein each said frame includes an engagement surface configured to abut against a surface of said module sufficient to permit an adhesive bond between said engagement surface and said module surface.

11. (Previously presented) A passageway for placement between an aircraft terminal and an aircraft for interconnecting said aircraft terminal with said aircraft, said passageway comprised of a plurality of passageway modules, wherein the improvement in each of said passageway module consists essentially of:

a floor element;

two wall elements positioned atop said floor element, said wall elements being positioned spacedly apart from one another and extending uprightly from said floor element;

a ceiling element positioned atop said two wall elements;

wherein said floor element, said wall elements and said ceiling element are fabricated from at least one pultruded panel defining a honeycomb cross section; and

connection structure for interconnecting said modules, one to another at their respective ends to form a continuous passageway, wherein said connection structure further comprises a pair of frame structures, said frame structures having an upwardly extending ear and a downwardly extending ear; a first pair of angle defining elongate connection elements for inter-cooperating with said upwardly extending ear and two ceiling elements of said modules; a second pair of angle defining elongate connection elements for inter-cooperating with said downwardly extending ear and two floor elements of said modules; and engaging structure for interconnecting said first pair of angle defining elongate connection elements with said pair of frame structures and for interconnecting said second pair of angle defining elongate connection elements with said pair of frame structures.

12. (Previously presented) The passageway of claim 11 wherein said frames are quadrilateral in configuration and wherein each said frame defines a passageway opening therethrough.

13. (Previously presented) The passageway of claim 11 wherein each said frame includes an engagement surface configured to abut against a surface of said module sufficient to permit an adhesive bond between said engagement surface and said module surface.

14. (Previously presented) The passageway of claim 12 wherein said at least one pultruded panel defines a honeycomb cross section and at least one elongate channel therein dimensioned to receive and retain wiring for servicing said passageway.

15. (Previously presented) The passageway of claim 14 wherein said floor element, said wall elements and said ceiling element are each fabricated from a plurality of pultruded panels, each of said pultruded panels defining a honeycomb cross-section and having a longitudinal axis, said longitudinal axes of said pultruded panels being oriented parallel to a longitudinal axis of said passageway.

16. (Previously presented) The passageway of claim 14 wherein said wall elements are each fabricated from a plurality of pultruded panels, each of said pultruded panels defining a honeycomb cross-section and having a longitudinal axis, said longitudinal axes of said pultruded panels of said wall elements being oriented orthogonal to a longitudinal axis of said passageway.

17. (Previously presented) The passageway of claim 14 wherein said ceiling element is fabricated from a plurality of pultruded panels, each of said pultruded panels having a longitudinal axis, said longitudinal axes of said pultruded panels of said ceiling element being oriented orthogonal to said longitudinal axis of said passageway.